

COMMONWEALTH OF MASSACHUSETTS

**NOTICE OF THE REGULARLY SCHEDULED MEETING OF THE
BOARD OF REGISTRATION IN DENTISTRY**

March 2, 2016
239 Causeway Street ~ Room 417 A&B
Boston, Massachusetts 02114

AGENDA

| Time | # | Item | Exhibits | Contact |
|--------------|-----|--|-----------------------|--|
| 8:30 a.m. | I | CALL TO ORDER, DETERMINATION OF QUORUM, AND APPROVAL OF AGENDA | | |
| 8:35 | II | M.G.L. c. 112, §65C SESSION (closed to the public) | | |
| 9:05 | III | EXECUTIVE SESSION (closed to the public) The Board will meet in Executive Session as authorized pursuant to M.G.L. c. 30A, § 21(a)(1) and (3) for the purposes of discussing the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against an individual, and to discuss strategy with respect to litigation as a public discussion may have a detrimental effect on the Board's position. Specifically, the Board will discuss and evaluate individuals with respect to the Good Moral Character requirement for initial licensure. Specifically, the Board will discuss and evaluate pending disciplinary complaints that involve patient records and treatment of patients. Specifically, the Board will discuss pending litigation: Commonwealth of Mass., et al. v. Donald Sydor, Suffolk Superior Court, C.A. 2015-00780-F. | | |
| 11:30 | IV | GENERAL SESSION (open to the public): PENDING BOARD MATTERS A-DEN-2014-0107: Dr. Zaher Hammoud B-DEN-2014-0108: Dr. Christina Woo C-DEN-2014-0109: Dr. Dhafar Witwit D-DEN-2014-0110: Alison Cheon, RDH E-DEN-2014-0111: Ernestina DaCosta, RDH F-DEN-2014-0112: Dr. Richard Liu G-SA-INV-7957: Dr. Gregory Stanley | Memos, Attachments | E. Mulligan, D. Taylor |
| 1:00 p.m. | V | ADMINISTRATIVE MATTERS A-Request for Waiver of CE Requirement: Dr. Mark Chung B-Good Moral Character Licensure Report C-Dental Assistant OJT Licensure Policy D-Regulatory Review Committee Update E-Election of ADEX Representative | Memos | B. Young, S. Leadholm, S. DuLong, J. Stultz |

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| 2:10 | VI | FLEX SESSION | | |
| 2:20 | VII | SANCTIONS HEARING A- DEN-2012-0092: Dr. Alan Shoopak | Memo | S. Leadholm |
| 2:40 | VIII | ADJUDICATORY SESSION (closed to the public) | | |
| 3:00 | | ADJOURNMENT | | |

MASSACHUSETTS BOARD OF REGISTRATION IN DENTISTRY
239 Causeway Street, Boston, MA 02114
Room 417
GENERAL SESSION MINUTES
March 2, 2016

Present: Dr. Stephen DuLong, Board Chair; Ms. Ailish Wilkie, Board Secretary; Dr. Keith Batchelder; Dr. Paul Levy; Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel, RDH; Ms. Jacyn Stultz, RDH; Ms. Kathleen Held, RDA.

Absent: Dr. John Hsu; Dr. Ward Cromer

Staff Present: Jeffrey Mills, Assistant Executive Director; Samuel Leadholm, Esq., Board Counsel; Dr. Liliana DiFabio, Supervisor of Investigations; OPP Investigators Sarah Millar, Eileen Mulligan, Kathleen O'Connell, Lisa Seeley-Murphy and Barbara Yates.

Dr. Keith Batchelder arrived at 8:37 a.m.

Motion: At 8:31 a.m., to commence the meeting and to adopt the proposed agenda for today's meeting.

Motion Made By: Dr. Paul Levy

Second: Dr. Cynthia Stevens

Vote: Unanimous

Motion: At 8:31 a.m., to enter M.G.L.c.112, §65C session.

Motion Made By: Ms. Lois Sobel

Second: Ms. Ailish Wilke

Vote: Unanimous

Motion: At 9:38 a.m., to leave M.G.L. c.112, §65C Session

Motion Made By: Ms. Lois Stevens

Second: Ms. Ailish Wilkie

Vote: Unanimous

At 9:38 a.m., Dr. DuLong announced that the Board will meet in closed session as authorized pursuant to M.G.L. c. 30A, §21(a)(1) for the purpose of discussing the reputation, character, physical condition or mental health, rather than the professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. Specifically, the Board will meet in Executive Session and will discuss and evaluate the Good Moral Character as required for registration of pending applicant(s) for licensure. Additionally, the Board will discuss and evaluate pending disciplinary complaints that involve patient records and treatment of patients. The Board will also discuss pending litigation: Commonwealth of Mass., et al. v. Donald Sydor, Suffolk Superior Court, C.A. 2015-00780-F.

Motion: At 9:39 a.m., to enter Executive Session for the purposes announced.

Moved: Ms. Lois Sobel

Second: Ms. Kathleen Held

Roll-Call Vote: **In favor:** Dr. Keith Batchelder; Dr. Stephen DuLong; Dr. Paul Levy; Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel, RDH; Ms. Jacyn Stultz, RDH; Ms. Kathleen Held; Ms. Ailish Wilkie
Opposed: None.

Motion: At 11:54 a.m., to leave Executive Session

Motion Made By: Dr. David Samuels

Second: Ms. Ailish Wilkie

Roll-Call Vote: **In favor:** : Dr. Keith Batchelder; Dr. Stephen DuLong; Dr. Paul Levy; Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel, RDH; Ms. Jacyn Stultz, RDH; Ms. Kathleen Held; Ms. Ailish Wilkie
Opposed: None.

Complaint Resolution: Investigator Danielle Taylor

In the Matter of SA-INV-7957: Dr. Gregory Stanley

The licensee was not present for the Board discussion and vote on this matter.

Allegation: Complainant unable to obtain dental record

Ms. Taylor reported to the Board that the complainant, after having filed the complaint, received a copy of the dental record and does not wish to move forward with the complaint.

Motion: **To not open as a complaint, as there is no evidence to support the allegation.**

Motion Made By: Dr. David Samuels

Second: Ms. Ailish Wilkie

Vote: Unanimous

Motion: **At 11:59 a.m., to recess for lunch.**

Motion Made By: Ms. Ailish Wilkie

Second: Ms. Jacyn Stultz

Vote: Unanimous

The meeting reconvened at 12:55 p.m.

Administrative Matters

Good Moral Character Licensure Report

Mr. Mills, in the absence of Executive Director Barbara Young, presented the report. Pursuant to BORID Policy 14-01, Staff Action to Identify Individual Registration Applications Requiring Good Moral Character Evaluations, the following license were issued between February 3, 2016 and March 2, 2016:

| | | |
|---------------------|------------------------|----------|
| Dr. Ashraf M. Naser | Limited License Intern | DL 12832 |
| Rebecca Schnauber | Dental Assistant | DA07290 |
| Jennifer Holbrook | Dental Assistant | DA07291 |
| Emily Mahan | Dental Assistant | DA07295 |
| Liana Reza | Dental Assistant | DA07357 |
| Lori Ann St. Cyr | Dental Assistant | DA07401 |
| Jewell Dehaven | Dental Assistant | DA07443 |
| Corrissa Gaboriau | Dental Assistant | DA07462 |

On-the-Job Trained Dental Assistant Licensing Process

Mr. Mills outlined the current process, which requires the OJT dental assistant applicant to provide a letter from a current supervising dentist in order to be issued a license. Additionally, current Board practice is to require the licensed dental assistant to answer a question on the renewal form that asks if the assistant's supervising dentist has changed since initial licensure or last renewal. If the licensee answers "yes" to that question, the licensee is advised to call the Board for further instruction. When receiving such a call, staff advise the licensee that we require a letter from her/his current supervising dentist in order to complete the license renewal. Until the Board receives such a letter, a hold is placed on the renewal.

Mr. Mills reminded the Board of its discussion at the February 3, 2016 meeting with Diane Zach-Seigal of RDII Temps, who shared with the Board the difficulty several of her employees have had in either obtaining an initial license or getting a license renewed, as these temporary employees cannot always obtain a letter from a current supervising dentist.

Ms. Wilkie expressed her concern that OJT dental assistants may not have sufficient training to perform all of the delegable duties of dental assistants. Dr. DuLong also voiced concern about this.

Dr. Batchelder stated that the onus for assuring that dental assistants perform their duties is on the dentist who supervises their work, even if it's just temporarily. If the assistant practices outside her/his allowed scope, the dentist is still responsible. He sees no reason the Board needs to track supervising dentists for these applicants and licensees.

Mr. Mills noted that a chart of delegable duties including those of dental assistants was part the Board's regulations before the legislation requiring dental assistant licensure was enacted. With the revised regulations of 2014, both the supervising dentist and the assistant are now accountable for assistants keeping within the appropriate scope of practice.

Ms. Stultz asked what the logistic implications would be if the Board were to vote to remove the requirement of the letter from the supervising dentist as a condition for initial licensure and renewal of licensure for OJT dental assistants.

Mr. Mills replied that the staff would need to remove the requirement from applications and renewal forms, staff would need to be informed of any change in process, and notification would need to go out to various constituencies. Board staff would also have to review pending license applications from OJT's to determine if the only outstanding requirement is the letter from the supervising dentist, then putting these applications through final review and license issuance. As well, staff would need to release the hold on the renewal of all OJT assistants who answered in the affirmative the question regarding a change of supervising dentist since the date of their initial licensure.

Ms. Wilkie inquired as to what negative impact such a decision could have. Dr. Batchelder opined there would be none.

Dr. Samuels noted that, in hindsight, dental assistant licensure has caused more issues than some dentists had imagined, but since such licensure is required, he sees no reason not to remove the requirement for the letter from the supervising dentist for initial licensure and renewals, as a dentist supervising the OJT assistant is still responsible for maintaining the standard of care and practice within authorized scope of practice for dental auxiliaries.

Motion: To no longer require a letter from a current supervising dentist for the On-the-Job Trained Dental Assistant to be licensed or to renew the license.

Motion Made By: Dr. David Samuels

Second: Ms. Jacyn Stultz

Vote: **In favor:** Dr. Keith Batchelder; Dr. Paul Levy; Dr. David Samuels; Dr. Cynthia Stevens; Ms. Lois Sobel, RDII; Ms. Jacyn Stultz, RDII.
Opposed: Ms. Kathleen Held; Ms. Ailish Wilkie
Abstain: Dr. Stephen DuLong

After the above vote, two members of the public in attendance at the meeting requested permission to ask clarifying questions. Dr. DuLong recognized Ms. Diane Zach-Seigal, who asked if this decision was effective immediately, to which he replied that it is. Dr. DuLong then acknowledged Mr. Ryan Ingram from the Massachusetts Dental Society, who inquired if this decision applies to the notice of intent to apply as a an OJT dental assistant, to which Mr. Mills replied that it did not, since the Board will need to be in touch with the supervising dentist of the intended applicant at the end of the six-month “no registration fee required” period.

Request for Waiver of Continuing Education Requirement: Dr. Mark Chung

Mr. Mills introduced the licensee’s request for waiver of the requirement for 40 continuing education credits for the license renewal cycle ending March 31, 2016. The licensee had provided a written request and several attachments. Prior to the meeting, Mr. Mills had provided the Board with email correspondence between the licensee and Mr. Mills concerning this request. Mr. Mills indicated that he had a recent telephone conversation with the licensee, who had stated that he did not intend to attend today’s meeting, as he was planning to work today. Mr. Mills also stated that the licensee had informed him that he did not want this matter discussed in a closed session of the Board.

Ms. Wilkie noted that the licensee has provided proof of only the required course in safe and effective prescribing for pain management, and that she had seen the licensee at the Yankee Dental Congress in 2015, the only such Congress she had attended prior to this year, and that conference date was within the current license renewal cycle.

Dr. Samuels read aloud some quotes from the licensee's email correspondence. Dr. Batchelder remarked that there is not enough medical documentation provided to show the licensee is physically unable to take the required continuing education. Ms. Wilkie asked if the licensee indicated he was practicing dentistry, to which Mr. Mills replied that the licensee said he would be "working" today, and that the licensee did not specify what kind of work that would be.

Motion: **To deny the request for waiver of Continuing Education for current license renewal cycle ending March 31, 2016, as there is insufficient evidence to warrant such waiver.**

Motion Made By: Dr. Keith Batchelder

Second: Ms. Ailish Wilkie

Vote: Unanimous

Dr. Samuels suggested the Board decide if any extension for the completion of the continuing education credits should be allowed. Dr. DuLong noted that it would be very difficult for anyone to complete the 40 credits minus the pain management course credits within the month of March, to which Board members agreed.

Motion: **To allow the licensee until September 30 to complete the Continuing Education requirement. Proof of completion must be presented to the Board by that date.**

Motion Made By: Dr. David Samuels

Motion was not seconded.

Ms. Stultz asked if there is a standard period during which a licensee can do a late renewal without any penalty other than the late fee. Mr. Mills replied that there is such a period; it is 90-days.

Dr. Stevens remarked that since there is not sufficient evidence to warrant a waiver, the Board could communicate to the licensee that there is a grace period during which he may complete the continuing education and pay the late fee to renew his license by the end of that period.

Motion: **To notify the licensee of the denial of waiver and to remind him that he may renew his license through a period 90 days beyond the license expiration date of March 31, 2016 by completing the required continuing education and paying the standard late fee.**

Motion Made By: Dr. David Samuels

Second: Ms. Jacyn Stultz

Vote: Unanimous

Regulatory Review Workgroup Update

Mr. Mills began the conversation by noting that the Workgroup has not been able to meet since December 16, 2015. Two scheduled meetings were canceled due to lack of quorum. He noted that there is still work to be done, particularly on 234 CMR 6.00 and 234 CMR 5.00.

Dr. Samuels said that he has heard complaints from two dentists on the workgroup. The complaints were that the work was proceeding slowly.

Mr. Mills mentioned that the different perspectives of the workgroup members who have experience with sedation dentistry may be contributory to this pace, and that the same dynamic may have been operable when the ADA was unable to finalize new guidelines for anesthesia at its annual meeting last year.

Ms. Wilkie opined that the workgroup is too small. If it were expanded, achieving quorum might be more possible. She also noted that of the voting membership on the workgroup, only Dr. Stevens is a general dentist.

Mr. Mills noted there are no voting members who are general dentists who administer nitrous, minimal or moderate sedation, or general anesthesia. Only Dr. Morton Rosenberg, a non-voting consultant to the workgroup, falls into this category.

Dr. Samuels opined that the addition of 5 general dentists to the workgroup would be helpful.

Dr. Batchelder suggested that the workgroup take a good look at recent regulations from other states and using that information as a basis for its work.

Dr. Stevens opined that the workgroup needs to be careful and that this type of careful work may take time.

Attorney Leadholm reminded the Board that a draft of sections 5.00 and 6.00 of the regulations should be ready for the Board's July or September, 2016 meeting in order to meet the expectations of the Administration.

Dr. Samuels will provide some names of general dentists for consideration for the workgroup to Ms. Young. Dr. Stevens will also work to provide names to Ms. Young. Ms. Sobel mentioned she believed some names may have been provided to Ms. Young after the Board's presentation at Yankee Dental Congress in late January.

Mr. Mills agreed to find some possible dates when the workgroup can convene soon.

Election of ADEX Representative

Dr. DuLong explained that ADEX is consolidating its representative structure. Previously, each state had a representative on the Examination Committee and one in the ADEX House of Representatives. They are now asking for only one member per state, to go to the House of Representatives. Our representatives have been Dr. Milton Glicksman in the Examination Committee and Dr. Mina Paul on the House of Representatives. Dr. DuLong has spoken with Dr. Paul, who would serve again if nominated.

Ms. Stultz requested a resume from Dr. Paul, to vet any potential conflict of interest.

Dr. Batchelder asked if anyone else has someone to nominate.

Motion: **To nominate Dr. Mina Paul as the Massachusetts member of the ADEX House of Representatives, contingent upon review of her resume demonstrating no conflict of interest.**

Motion Made By: Dr. Keith Batchelder

Second: Dr. Paul Levy

Vote: **In favor:** Dr. Keith Batchelder; Dr. Paul Levy; Dr. David Samuels; Ms. Lois Sobel, RDII; Ms. Kathleen Held; Ms. Ailish Wilkie.
Opposed: Dr. Cynthia Stevens; Ms. Jacyn Stultz, RDII.
Abstain: Dr. Stephen DuLong

Flex Session

Mr. Mills indicated that the matter of late renewal by dental assistants will be on the Board's agenda.

Dr. DuLong cautioned members against making remarks disrespectful of dental assistants during meetings.

Ms. Stultz informed the Board that Mount Ida's dental hygiene and dental assisting program were recently visited for accreditation review by C'ODA. The final report indicated that the school passed the review 100%; no recommendations were made for the school to incorporate.

Dr. Samuels would like the matter of the "civil suit" question on the dentists' license renewal questionnaire placed on the Board's April agenda. Dr. DuLong's understanding is that while this data is collected, unless a civil suit pertains to the practice of dentistry, the Board would not consider it a violation of regulations.

Ms. Wilkie related that a physician who works with her has had a complaint against her license opened by the Board of Medicine. One of the physician's patients was found dead, with an empty bottle for opioids prescribed by the physician next to the patient's body. Chief Prosecuting Counsel Jodi Greenburg stated that the Board of Registration in Nursing often has such matters referred to them by District Attorneys' offices, and that proposed PMP policy asks for all such

cases to be referred to the prescriber's board of registration. Ms. Wilkie continued by saying she brought this to the Board's attention, as it is likely there will be such matters coming before this Board. Attorney Greenburg indicated that these matters would be brought as staff assignments for the Complaint Committee's review.

Memo in Support of Mitigation of Sanction—Dr. Alan D. Shoopak: DEN-2012-0092

Licensee and Attorneys Mark Furman and John Steubing addressed the Board regarding this matter. Licensee requests the sanction of stayed probation, rather than a disciplinary sanction. The Board, at its meeting of April 3, 2013, had voted to offer the Licensee a consent agreement for six months of suspension to be followed by a period of probation prior to which he was to complete remedial continuing education in risk management (full day), graduate level course in ethics obtaining a grade of B or better (one semester), and CDC Guidelines for Infection Control in Dental Health Care Settings (full day). Licensee declined to enter into the consent agreement and requested a hearing on the complaint.

Attorney Furman related to the Board that the Licensee owned the practice in which Board staff conducted a compliance inspection in May 2012; the Licensee did not practice in that location, as he resides in Florida. The Licensee was shocked to learn of the spore testing violation that was discovered. At that practice, the Licensee employed licensed dentists, a director of operations, and many other staff. There had been a breakdown in communication between the Licensee and the staff at the practice location. Upon learning of the spore testing violation, the Licensee closed the facility until all violations were corrected. The Licensee had purchased this practice because an instructor for Tufts University School of Dental Medicine contacted the Licensee and asked him to buy the practice to alleviate his (the instructor's) tax problems. The arrangement was that the person who was on-site for the past 15 years would continue as practice manager. The Licensee would receive 50% of profits, and the instructor would receive the benefits of the sale to the Licensee.

Dr. Samuels asked if there were other mitigating factors in this matter than the Licensee's not being present at this dental practice.

Attorney Furman stated that the Licensee sold this practice as soon as possible after correcting all deficiencies, as the Licensee wants to protect his reputation in Florida.

Dr. Batchelder asked the Licensee how many times he had visited the practice in Massachusetts.

The Licensee replied that he had visited once, but that was a meeting with the staff at a restaurant.

Dr. Batchelder asked the Licensee if he had ever reviewed patient records at the practice or visited the facility.

The Licensee replied that he had not.

Dr. Levy asked where the lead dentist in that practice was now.

Attorney Furman replied that he is licensed in Massachusetts, but that he did not know the location of his practice, if any.

Ms. Stultz inquired of the Licensee if his name appeared on signage or stationery of the practice.

The Licensee did not recall.

Dr. Samuels remarked that the Board has reviewed several matters in which the owner has been absentee, and that problems often occur in such situations.

Attorney Furman stated that the Licensee did not have the goal of returning to Massachusetts to practice dentistry here. Attorney Furman noted that the non-owner dentists in this matter before the Board received either advisory letters or offers for consent agreement for stayed probation.

Dr. Samuels asked when the Licensee had purchased this dental practice.

The Licensee replied that he purchased it in 2009. He continued by saying that he is not engaged in conglomerate dentistry. This was the only practice outside of Florida in which he was involved. He relied on others to bring any problems to his attention. After the Board's inspection, the practice manager called him, and the Licensee spoke by phone with the Board's investigator the following day.

Dr. Stevens asked the Licensee if he accepts responsibility of the operations of the practice, as its owner.

The Licensee replied in the affirmative.

Dr. Levy asked if the owner and the dental director were responsible.

Dr. DuLong responded that both are responsible, but the ultimate responsibility is that of the dentist owner.

Ms. Wilkie asked the Licensee who was in charge in the facility in Massachusetts.

The Licensee replied that there was a dental director who was the clinical manager, as well as a practice manager who is not a dentist.

Ms. Wilkie asked the Licensee if he realized that the dentist owner is the head of the ship.

The Licensee replied that he didn't know.

Attorney Furman indicated that during the time the Licensee owned the Massachusetts practice, there were several dentists who had worked there. The practice had an open account with a spore testing company and had all the necessary equipment to perform spore tests.

Board Counsel Leadholm asked the Licensee how often he had inquired about the spore test results in the practice.

The Licensee replied that he had assumed the folks in Massachusetts were taking care of everything properly. He is not about corporate dentistry, but operated the business with central administration, while the clinical practice took place locally. The Licensee stated that he probably should have run things differently. He concluded by asking the Board to keep in mind that its decision would affect his licensure in Florida.

Motion: At 2:38 p.m., to leave General Session and enter Adjudicatory Session.

Motion Made By: Ms. Lois Sobel

Second: Ms. Ailish Wilke

Vote: Unanimous

Motion: At 3:02 p.m., to leave Adjudicatory Session and enter General Session.

Motion Made By: Ms. Ailish Wilkie

Second: Ms. Lois Sobel

Vote: Unanimous

Motion: At 3:02 p.m., to adjourn.

Motion Made By: Ms. Ailish Wilkie

Second: Ms. Kathleen Held

Vote: Unanimous

Respectfully submitted,

Ms. Ailish Wilkie, Board Secretary

Date

